

JS 44 (Rev. 12/07)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Larry Thornton and Lynda Grisby-Thornton

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Robert J. Lowe, Jr. & William E. Cassara  
2907 Professional Parkway, Augusta, GA 30907**DEFENDANTS**

United States of America

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- |                                                                 |                                                                                       |
|-----------------------------------------------------------------|---------------------------------------------------------------------------------------|
| <input type="checkbox"/> 1 U.S. Government Plaintiff            | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)             |
| <input checked="" type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity<br>(Indicate Citizenship of Parties in Item III) |

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	PTF	DEF	Citizen of Another State	PTF	DEF
	<input type="checkbox"/> 1	<input type="checkbox"/> 1		<input type="checkbox"/> 4	<input type="checkbox"/> 4

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>		
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input checked="" type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability			<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine			<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 370 Other Fraud		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 195 Contract Product Liability				<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 196 Franchise				
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<b>SOCIAL SECURITY</b>	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 861 HJA (1395f)	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<b>Habeas Corpus:</b>	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 894 Energy Allocation Act
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 895 Freedom of Information Act
			<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			<input type="checkbox"/> 740 Railway Labor Act	
			<input type="checkbox"/> 790 Other Labor Litigation	
			<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	
			<b>IMMIGRATION</b>	
			<input type="checkbox"/> 462 Naturalization Application	
			<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	
			<input type="checkbox"/> 465 Other Immigration Actions	
				<input type="checkbox"/> 900Appeal of Fee Determination Under Equal Access to Justice
				<input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN** (Place an "X" in One Box Only)

- |                                                |                                                     |                                                          |                                                   |                                                                              |                                                     |                            |
|------------------------------------------------|-----------------------------------------------------|----------------------------------------------------------|---------------------------------------------------|------------------------------------------------------------------------------|-----------------------------------------------------|----------------------------|
| <input type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 |
|------------------------------------------------|-----------------------------------------------------|----------------------------------------------------------|---------------------------------------------------|------------------------------------------------------------------------------|-----------------------------------------------------|----------------------------|

Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
**28 U.S.C. Section 2674****VI. CAUSE OF ACTION**

Brief description of cause:

**Federal Tort Claims Medical Malpractice****VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23

DEMAND \$ 10,000,000.00

CHECK YES only if demanded in complaint:  
**JURY DEMAND:**  Yes  No**VIII. RELATED CASE(S)  
IF ANY**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE

July 20, 2011

FOR OFFICE USE ONLY

SIGNATURE OF ATTORNEY OF RECORD

RECEIPT # \_\_\_\_\_

AMOUNT \_\_\_\_\_

APPLYING IFFP \_\_\_\_\_

JUDGE \_\_\_\_\_

MAG. JUDGE \_\_\_\_\_

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
AUGUSTA DIVISION

LARRY THORNTON, and )  
LYNDA GRISBY-THORNTON )  
Plaintiff, )  
v. ) Civil Action No.: \_\_\_\_\_  
UNITED STATES OF AMERICA, )  
Defendant. )

**PLAINTIFF'S ORIGINAL  
COMPLAINT FOR FEDERAL TORT CLAIM**

**A. PARTIES**

1. Plaintiff LARRY THORNTON and LYNDA GRISBY-THORNTON are Husband and Wife and are United States citizens.
2. Defendant, United States of America, may be served by delivering a copy of the Summons and of the Complaint to the U.S. Attorney for the Southern District of Georgia. Defendant may also be served by sending a copy of the Summons and of the Complaint by registered or certified mail to the attorney general of the United States at Washington, District of Columbia, and by also sending a copy of the Summons and of the Complaint by registered or certified mail to the officer or agency whose action is at issue in this suit, but who is not made a party to this suit.

**B. JURISDICTION & VENUE**

3. The Court has jurisdiction over this lawsuit because the action arises under the Federal Tort Claims Act and jurisdiction is proper under 28

U.S.C. §1346(b)(1). Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(2).

**C. CONDITIONS PRECEDENT**

4. Plaintiff timely presented this claim in writing to the Department of Veterans Affairs, pursuant to 28 U.S.C. §2675. This suit is filed within six (6) months of the agency's final written notice of its denial of the claim.

**D. FACTS**

5. In February 2009, Larry Thornton had a colonoscopy at the Augusta VA Medical Center in downtown Augusta, Georgia at which time two polyps were removed. A week later he was informed by the Augusta VA that the polyps were diagnosed as cancerous. A colon resection surgery was scheduled for April 29, 2009, the date of the surgery.

6. Prior to the surgery Mr. and Mrs. Thornton were informed that the total hospital stay would be approximately 3 days.

7. Surgery was performed on April 29, 2009 at the VA Medical Center in Augusta, Georgia.

8. The day after the surgery Mr. Thornton spiked a fever and on the third day, when he was supposed to go home, Mr. Thornton was taken back to the operating room and "reopened" by the VA surgeons to look for leakage of the colon at the site of the operation.

9. After the second surgery on May 2, 2009, the doctors told Mrs. Thornton that the first connection did not hold, it had broken apart, that they had not done a double stitching or double fold, and that when they went back in they did a "double fold."

10. Mr. Thornton did not improve after the second surgery; his condition worsened. Ultimately a third surgery was required.

11. Between the second and third surgery Mr. Thornton went drastically downhill, experienced extreme swelling in the belly area and his belly ultimately “exploded”, meaning his stomach ruptured and his intestines spilled out. Prior to this point, Mrs. Thornton continually pointed out that he seemed to be swelling too much. The responses of Doctors and Nurses was that it was “normal” from the surgery, or “he is a big fellow.” After his stomach exploded and his intestines actually came out, he went back in for another surgery. Thereafter, he was placed in an induced coma for a period of approximately 15 days, to prevent further spillage of his intestines from coughing or movement. During this entire time period he continued to spike fever and battle infection as a result of the negligence of the Defendant’s agents. Mr. Thornton also remained on a ventilator which was inserted after the second surgery.

12. Mr. Thornton struggled with multiple complications thereafter and was not discharged from the hospital, to rehab, until approximately July 10, 2009. Thus, a hospital stay that was to last 3 days in fact lasted approximately 2 months and 12 days.

13. Mr. Thornton now suffers physical and mental pain on a daily basis, is disabled from a nerve/foot drop condition, and has permanent scarring and disfigurement, all as a result of the negligent treatment at the Augusta VA Medical Center.

#### E. FEDERAL TORT CLAIMS ACT

14. The acts by the employees of the Defendant were negligent as set forth above, all as set forth in the attached affidavit of Ronald Gross, M.D., in that the medical professionals violated the applicable standard of care, as follows:

- (a) the initial anastomosis was poorly vascularized leading to the subsequent necrosis and anastomotic leak/disruption;
- (b) the surgery of May 2, 2009, to investigate and repair the initial failure was below the standard of care in that the reanastomosis was performed in a soiled abdomen under less than ideal conditions and should have been delayed by an ileostomy and closure, or stapling, and subsequent return to operating room at least 24 hours later after a second washout.

#### F. DAMAGES

15. As a direct and proximate result of Defendant's negligence, Plaintiff Larry Thornton has suffered the following injuries and damages:

- (a) Severe physical pain and mental anguish in the past and future;
- (b) lost earnings;
- (c) damage to earning capacity;
- (d) disfigurement in the past and future;
- (e) permanent injury and disability and the resultant loss of quality of life and expected life span;
- (f) medical expenses in the past and future;
- (g) physical impairment in the past and future;

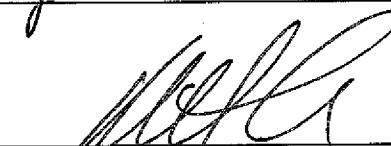
16. As a direct and proximate result of Defendant's negligence, causing the injuries to Larry Thornton, Plaintiff Lynda Grisby-Thornton also brings this action for the loss of the society, companionship and consortium of her spouse brought about by the personal injuries which her spouse sustained as a result of the negligence of the Defendant's employees at the Augusta VA Medical Center.

**G. PRAYER**

17. For these reasons, Plaintiffs ask for judgment against Defendant for the following:

- (a) Actual damages of Ten Million (\$10,000,000.00) Dollars;
- (b) Costs of suit;
- (c) Pre-judgment and post-judgment interests;
- (d) All other relief the Court deems appropriate.

This 20 day of July, 2011.



ROBERT J. LOWE, JR.  
State Bar No. 459883

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